IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

M.A.C.A.No.1252 of 2005(C)

O.P.(M.V).NO.1073/1999 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM.

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APPELLANT/PETITIONER:-

MANEESH K.JACOB, S/O. K.V.JACOB,
KALATHILPARAMBIL HOUSE, KUNNAMPALLY,
MOOLAVATTOM P.O., KOTTAYAM.

BY ADV. SRI.B.SAINU

RESPONDENTS: RESPONDENTS:-

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1. THE MANAGING DIRECTOR,
   THE TRAVANCORE CEMENTS LTD., NATTAKOM, KOTTAYAM.

2. JOSEPH JOSE, S/O. VARKEY,
   MALLETHUPUTHENPARAMBIL HOUSE, THIRUVAMPADY KARA,
   NJEEZHOOR VILLAGE.

3. THE MANAGER,
   KERALA STATE INSURANCE DEPARTMENT, KANJIKUZHY.

R1 BY ADV.SRI.JOSEPH MARKOSE
SRI.MITHUN MARKOS

R2 BY ADV. SRI.M.M.SAIDU MUHAMMED

R3 BY GOVERNMENT PLEADER SRI.L.G.SURESH BABU.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

K.Padmanabhan Nair,J.

M.A.C.A.No.1252 of 2005-C

Dated, this the 16th day of March, 2007

JUDGMENT

Heard. Admitted. Sri.Joseph Markose takes notice for the 1st respondent, Sri.N.M.Saidu Muhammed for the 2nd respondent and the learned Government Pleader for the 3rd respondent.

2. The petitioner in O.P.(M.V.) No.1073 of 1999 on the file of Motor Accidents Claims Tribunal, Kottayam is the appellant. The appellant filed petition claiming compensation alleging that when he was travelling in a bus bearing registration No.KRK 4868 belonging to the 1st respondent, driven by the 2nd respondent, he sustained injuries. It was alleged that the bus was driven by the 2nd respondent in a rash or negligent manner. So, it hit against an electric post on the side of the road and the appellant, who was sitting on the side of the bus sustained injuries. The 2nd respondent did not appear and contest the matter before the Court below. The 3rd respondent filed a written statement denying the allegation that the accident occurred due

to the rash or negligence of the 2nd respondent-driver. The quantum of compensation claimed was also disputed. The 1st respondent filed a written statement denying the allegation of rash or negligent driving of the vehicle by the 2nd respondent and also the quantum of compensation. The Tribunal dismissed the application holding that the appellant did not produce any material to show that an accident as alleged had taken place.

3. It is true that no evidence was adduced to the effect that an accident took place as alleged in the petition. The counsel for the appellant has made available a copy of the F.I.R. for my perusal. Though I do not find any reason to accept additional evidence in this Court, considering the fact that a criminal case is also registered in respect of the accident I am of the view that it is just and proper that a reasonable opportunity be given to the appellant to substantiate his case. For that purpose, the matter has to go back.

In the result, the appeal is allowed. The award passed by the Tribunal dismissing O.P.(M.V.).No.1073 of 1999 is hereby set aside. The case is remanded. The Tribunal is directed to take O.P.(M.V.).No.1073 of 1999 back to file and dispose of the same

in accordance with law after giving a reasonable opportunity to both sides to adduce evidence. The parties shall appear before the Tribunal on 26.4.2007.

I.A.No.578 of 2007 perused and closed.

I.A.No.579 of 2007 stands closed.

K.Padmanabhan Nair
Judge

vku/-